

AN AD HOC ARBITRATION UNDER THE RULES OF ARBITRATION OF THE UNITED
NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, 1976

AND

PURSUANT TO THE ENERGY CHARTER TREATY

BETWEEN:

NORD STREAM 2 AG

(Claimant)

- and -

THE EUROPEAN UNION

(Respondent)

NOTICE OF ARBITRATION

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26 September 2019

TABLE OF CONTENTS

1.	INTRODUCTION AND PARTIES TO THE DISPUTE.....	1
2.	JURISDICTIONAL REQUIREMENTS OF THE ECT	4
3.	THE FACTUAL BACKGROUND TO THE DISPUTE	7
4.	THE EU'S BREACHES OF THE ECT	11
5.	RELIEF SOUGHT.....	12
6.	REFERENCE TO ARBITRATION	12
7.	CONSTITUTION OF THE TRIBUNAL AND PROCEDURAL MATTERS	14
8.	INTERIM RELIEF	15

1. INTRODUCTION AND PARTIES TO THE DISPUTE

1. Nord Stream 2 AG (the "**Claimant**" or "**NSP2AG**"), a company incorporated in Switzerland, hereby serves this Notice of Arbitration (the "**Notice**") on the European Union (the "**Respondent**" or the "**EU**") in accordance with Article 3 of the Arbitration Rules of the United Nations Commission on International Trade Law 1976 (the "**UNCITRAL Rules**") and Article 26(4)(b) of the Energy Charter Treaty (the "**ECT**").¹ NSP2AG has duly authorised the undersigned to institute and pursue the present arbitration proceedings on its behalf.² The Notice comprises this submission plus Claimant's Exhibits C-1 to C-12 and CL-1 to CL-7 (factual exhibits are referred to as "C-[•]" and legal exhibits are referred to as "CL-[•]").
2. This Notice concerns a dispute for the purposes of Article 26 of the ECT (the "**Dispute**") between NSP2AG and the EU arising under the ECT.
3. NSP2AG seeks a declaration of breach and injunctive relief (and reserves the right to seek, in addition or in the alternative, pecuniary compensation) arising out of the EU's breaches of the ECT in connection with the EU's discriminatory introduction and enactment of Directive (EU) 2019/692 (the "**Amending Directive**"),³ amending Directive 2009/73/EC of 13 July 2009 concerning common rules for the internal market in natural gas (the "**Gas Directive**" or "**Third Gas Directive**"),⁴ and the consequent impact of the Amending Directive on NSP2AG.
4. The Claimant demands, pursuant to Article 3(3)(a) of the UNCITRAL Rules, that the Dispute which has arisen between NSP2AG and the EU be referred to arbitration under Article 26(4) of the ECT.

The Parties

5. The Claimant is a limited liability company incorporated under the laws of Switzerland and has its registered office at Baarerstrasse 52, CH-6300 Zug, Switzerland.⁵
6. The Claimant is represented in these proceedings by its legal counsel, Professor Dr. Kaj Hobér of 3 Verulam Buildings, and Andrew Cannon, Lode Van Den Hende, Iain Maxwell, Hannah Ambrose, Louise Barber, Juliana Penz-Evren and Jerome Temme of Herbert Smith Freehills LLP. All correspondence in relation to this arbitration should be sent to:

¹ Exhibit CL-1, the Energy Charter Treaty as signed in 1994. Also exhibited at Exhibit CL-2 is a consolidated version of the Energy Charter Treaty and related documents published on the Energy Charter website and available at <https://energycharter.org/process/energy-charter-treaty-1994/energy-charter-treaty/>. This contains the text currently in force, with modifications up to date included and parts which are no longer applicable removed for the sake of clarity.

² Exhibit C-1, Power of Attorney by NSP2AG dated 24 September 2019.

³ Exhibit CL-3, Directive (EU) 2019/692 of the European Parliament and of the Council of 17 April 2019 amending Directive 2009/73/EC concerning common rules for the internal market in natural gas.

⁴ Exhibit CL-4, Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.

⁵ Exhibit C-2, Extract of the Register of Commerce of the Canton of Zug for Nord Stream 2 AG.

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7. The Respondent in these proceedings is the EU. To the best of the Claimant's knowledge, communications on this matter with the EU should be sent to the following addresses:

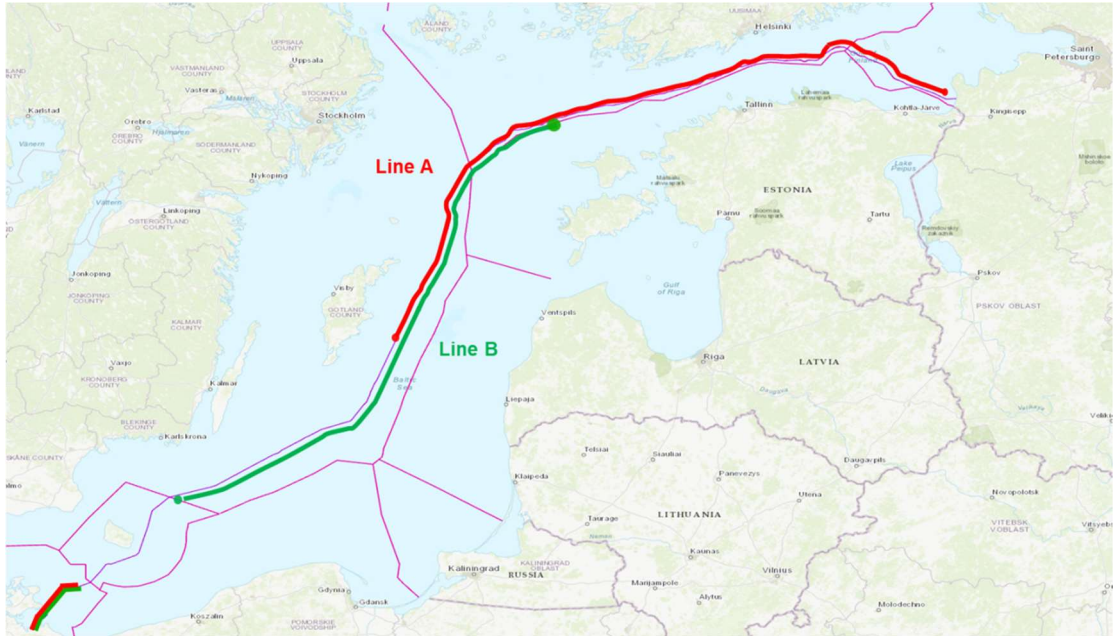
Mr Jean-Claude Juncker President of the European Commission Rue de la Loi 200 1049 Bruxelles Belgium	Email: president.juncker@ec.europa.eu
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 Deputy Head of Unit Directorate-General for Trade Directorate F – WTO, Legal Affairs and Trade in Goods F2: Dispute Settlement and Legal Aspects of Trade Policy European Commission Rue de la Loi 200 1049 Bruxelles Belgium	Email: 

The Nord Stream 2 Pipeline

8. NSP2AG was established in 2015 for the purpose of planning, construction and subsequent operation of the Nord Stream 2 pipeline ("**Nord Stream 2**"). Nord Stream 2 is a major gas

infrastructure project, involving the construction of an offshore import pipeline that will transmit natural gas from Ust-Luga in Russia to Lubmin in Germany, supplementing existing transport and transmission routes. The exit point of Nord Stream 2 will connect to the entry point of the regulated German transmission system in Lubmin (see map on page 4 below). NSP2AG is the direct owner of all infrastructure related to, and is the intended operator of, the entire Nord Stream 2 pipeline.

9. To date, NSP2AG has made approximately [REDACTED] in contractual commitments in relation to Nord Stream 2, involving over 670 companies from 25 countries. The value of the works completed to date is approximately [REDACTED]. These commitments include significant contracts for the supply of line pipes, their concrete weight coating, subsequent laying, and the construction of landfall facilities in Germany.
10. On 7 March 2017, NSP2AG concluded a long term gas transportation agreement with Gazprom Export LLC [REDACTED] [REDACTED] (the "**GTA**"). In April and June 2017, key financing agreements were entered into between NSP2AG (as borrower) and PJSC Gazprom, Engie Energy Management Holding Switzerland AG, OMV Gas Marketing Trading & Finance B.V., Shell Exploration and Production (LXXI) B.V., Uniper Gas Transportation & Finance B.V. and Wintershall Nederland Transport and Trading B.V. for the financing of [REDACTED] of the cost of the project. [REDACTED]
11. In February 2018, the on-site construction works began. The twin pipeline system consists of two approximately 1,230-kilometres-long pipelines, each made up of some 100,000 pipe joints. As depicted in the map below, when the Amending Directive was adopted by the EU on 17 April 2019, approximately 1,042 kilometres of Nord Stream 2 had been constructed in the territorial sea and/or exclusive economic zone of Finland, Germany, Russia and Sweden.



2. JURISDICTIONAL REQUIREMENTS OF THE ECT

12. For the following reasons, the Claimant's claim set out in this Notice fulfils each of the jurisdictional requirements under the ECT. Hence the Claimant's investments in the EU are protected by the ECT.
13. The substantive protections set out in the ECT apply to "Investments" of "Investors" of one "Contracting Party" in the "Area" of the other "Contracting Party".

Contracting Parties to the ECT

14. The EU is a Regional Economic Integration Organisation within the meaning of Article 1(2) of the ECT. Switzerland and the EU have both signed the ECT and deposited their instruments of ratification, acceptance or approval and are therefore both Contracting Parties to the ECT.⁶

The Claimant is a Swiss "Investor" for the purposes of the ECT

15. Article 1(7) of the ECT provides that:

"Investor" means:

⁶ Article 1(2) of the ECT defines "Contracting Party" as "a state or Regional Economic Integration Organization which has consented to be bound by this Treaty and for which the Treaty is in force." The EU signed the ECT on 17 December 1994, deposited its instrument on 16 December 1997 and the ECT entered into force in respect of the EU on 16 April 1998: Energy Charter Secretariat, "Members & Observers: European Union and Euratom", available at <https://energycharter.org/who-we-are/members-observers/countries/european-union-and-euratom/>. Switzerland signed the ECT on 17 December 1994, ratified it on 28 May 1996, deposited its instrument on 19 September 1996 and the ECT entered into force in respect of Switzerland on 16 April 1998: Energy Charter Secretariat, "Members & Observers: Switzerland", available at <https://energycharter.org/who-we-are/members-observers/countries/switzerland/>.

(a) with respect to a Contracting Party:

[...]

(ii) a company or other organization organized in accordance with the law applicable in that Contracting Party;"

16. NSP2AG is a company constituted under the law of Switzerland.⁷ NSP2AG is therefore a Swiss Investor for the purposes of the ECT.

NSP2AG's construction of Nord Stream 2 and related activities constitutes an "Investment" for the purposes of the ECT

17. Article 1(6) of the ECT provides that:

"Investment" means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:

(a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;

(b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise;

(c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;

(d) Intellectual Property;

(e) Returns;

(f) any right conferred by law or contract or by virtue of any licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector". (emphasis added)

18. The definition of Investment in Article 1(6) is a broad one, of which the subparagraphs are only examples. The Claimant's investments in the EU fall squarely within both the broad general definition and the specific examples. As regards the latter, and without limitation, the Claimant's investments include the following:

- i. The Claimant owns, has constructed and will operate the whole of the Nord Stream 2 pipeline, including the section in German territorial waters and the landfall facilities. This constitutes tangible property within Article 1(6)(a);
- ii. The land purchased by the Claimant in Germany where the pipeline makes landfall, which constitutes property and property rights within Article 1(6)(a);
- iii. The Claimant's contracts with various EU companies for the performance of services or provision of materials connected with the construction and operation of Nord Stream 2, which constitute claims to performance

⁷ Exhibit C-2, Extract of the Register of Commerce of the Canton of Zug for Nord Stream 2 AG.

pursuant to contract having an economic value and associated with an Investment within Article 1(6)(c); and

- iv. The permits obtained by the Claimant from Finland, Sweden and Germany to authorise the construction and/or operation of Nord Stream 2 in those areas, which constitute a right conferred by virtue of licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector within Article 1(6)(f).

19. The Claimant has therefore made qualifying Investments for the purposes of the ECT. To illustrate this point at the most simple level, the Claimant exhibits to this Notice of Arbitration a photograph of its installations in Germany, where the pipeline makes landfall within the EU.⁸
20. The Claimant reserves the right to amend or supplement this description and categorisation of its investments.

NSP2AG's Investment is associated with an "Economic Activity in the Energy Sector"

21. Article 1(6) of the ECT also provides that:

"Investment" refers to any investment associated with an Economic Activity in the Energy Sector and to investments or classes of investments designated by a Contracting Party in its Area as "Charter efficiency projects" and so notified to the Secretariat". (emphasis added)

22. Article 1(5) provides that "*Economic Activity in the Energy Sector*" means:

"an economic activity concerning the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sale of Energy Materials and Products except those included in Annex NI, or concerning the distribution of heat to multiple premises".

23. "*Energy Materials and Products*" are defined in Article 1(4) and Annex EM I (Article 27.11) of the ECT to include, among other things, "*Petroleum gases and other gaseous hydrocarbons*".
24. Therefore, any investment associated with the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing or sale of natural gas satisfies this definition. The Claimant's investments as outlined in paragraph 18 above are all associated with the transmission, distribution, trade, marketing and sale of natural gas through the construction and operation of Nord Stream 2, which will transmit natural gas from Russia to Germany.

NSP2AG's Investment is made in the EU's "Area"

25. Article 1(10) provides that:

"Area" means with respect to a state that is a Contracting Party:

⁸ Exhibit C-3, photograph showing NSP2AG installations in Germany on 14 May 2019.

(a) the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea; and

(b) subject to and in accordance with the international law of the sea: the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises sovereign rights and jurisdiction.

With respect to a Regional Economic Integration Organisation which is a Contracting Party, Area means the Areas of the member states of such Organisation, under the provisions contained in the agreement establishing that Organisation".

26. The Area of the EU therefore includes the Area of all EU Member States, including Germany.
27. The Claimant has made investments in the Area of the EU, including (without limitation) the construction of Nord Stream 2 in the German territorial sea and the landfall facilities; the purchase of land in Germany for this purpose; the conclusion of contracts with EU companies; the obtaining of permits from Finland, Sweden and Germany to authorise the operation of Nord Stream 2 in those Areas; and other commercial activities and investments associated with these investments.

Dispute pursuant to Article 26 of the ECT

28. For the purposes of Article 26 of the ECT, the dispute that has arisen between NSP2AG and the EU, described further below, qualifies as a dispute between a Contracting Party (the EU) and an Investor of another Contracting Party (NSP2AG) relating to NSP2AG's Investment in the Area of the EU concerning an alleged breach of an obligation of the EU under Part III of the ECT.

3. THE FACTUAL BACKGROUND TO THE DISPUTE

The Gas Directive: unbundling, third party access and tariff regulation

29. The Gas Directive is the main EU legislative measure governing the EU's own internal gas market. It seeks to achieve a "fully open" internal market in natural gas by establishing "*common rules for the transmission, distribution, supply and storage of natural gas*".⁹ Regulation 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks (the "**Gas Regulation**") was adopted alongside the Gas Directive.¹⁰
30. The objective that the Gas Directive and Gas Regulation seek to achieve in relation to transmission networks is to create the network conditions that allow competition to develop an integrated market for gas in the EU.

⁹ Exhibit CL-4, the Gas Directive, Article 1. For completeness, the "consolidated version" of the Gas Directive, incorporating amendments to the Gas Directive as published on the EUR-Lex website as at 25 September 2019, is exhibited at Exhibit CL-5.

¹⁰ Exhibit CL-6, Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005. For completeness, the "consolidated version" of the Gas Regulation, incorporating amendments to the Gas Regulation as published on the EUR-Lex website as at 25 September 2019, is exhibited at Exhibit CL-7.

31. The Gas Directive and Gas Regulation seek to achieve their objective of EU market integration by applying rules concerning unbundling (Article 9 of the Gas Directive), third party access (Article 32 of the Gas Directive) and tariff regulation (Article 41 of the Gas Directive) in respect of transmission infrastructure.
32. Unbundling involves the separation of gas transmission networks from activities of gas production and supply. The stated objective is to prevent conflicts of interests that might encourage the operator of a transmission system network to advantage the gas supply arm of its own vertically integrated undertaking, to the disadvantage of independent gas suppliers, by discriminating against competitors as regards both network access and investment by the vertically integrated undertaking in the network.
33. The basic unbundling obligation in the Gas Directive requires full separation of (i) the ownership and operation of gas transmission networks; and (ii) gas production and supply activities. Owners and operators of transmission systems need to be certified as complying with unbundling requirements by national regulatory authorities pursuant to Article 10 of the Gas Directive. Where they are owned or operated by persons from third countries, Article 11 imposes additional certification requirements.
34. Articles 32 and 41(6), (8) and (10) of the Gas Directive require that a transmission system operator caught by the Gas Directive must allow access to its capacity on a non-discriminatory basis to possible customers based on published tariffs, determined by the national regulatory authority of the Member State concerned. Additional rules concerning (i) the type of access services that transmission system operators must provide and how these are offered to customers; and (ii) tariffs and the methodologies to calculate them, are provided for in the Gas Regulation (inter alia, Articles 13 and 14).

Changes to the Gas Directive: the Amending Directive

35. Prior to the Amending Directive, the Gas Directive did not apply to third country offshore import pipelines such as Nord Stream 2. The Amending Directive amends the definition of "*interconnector*" contained in Article 2(17) of the Gas Directive. Whilst the definition previously covered a transmission line that connected the transmission systems of two Member States, the definition now also includes "*a transmission line between a Member State and a third country up to the territory of the Member States or the territorial sea of that Member State*".¹¹
36. The consequence is to expand the application of the Gas Directive, including in particular, the rules concerning unbundling (Article 9 of the Gas Directive), third party access (Article 32 of the Gas Directive) and tariff regulation (Article 41 of the Gas Directive) in respect of

¹¹ Exhibit CL-3, the Amending Directive, Article 1(1).

transmission infrastructure, to third country offshore import pipelines such as Nord Stream 2.

Derogation possibility for offshore import pipelines other than Nord Stream 2

37. The Amending Directive introduces Article 49a, which provides as follows in paragraph 1:

"In respect of gas transmission lines between a Member State and a third country completed before 23 May 2019, the Member State where the first connection point of such a transmission line with a Member State's network is located may decide to derogate from Articles 9, 10, 11 and 32 and Article 41(6), (8) and (10) for the sections of such gas transmission line located in its territory and territorial sea, for objective reasons such as to enable the recovery of the investment made or for reasons of security of supply, provided that the derogation would not be detrimental to competition on or the effective functioning of the internal market in natural gas, or to security of supply in the Union".¹² (emphasis added)

38. Recital (4) of the Amending Directive states that the derogation possibility is provided "[t]o take account of the lack of specific Union rules applicable to gas transmission lines to and from third countries before the date of entry into force of this Directive".¹³ Article 49a therefore recognised that investors took investment risk (and invested) before the Amending Directive became applicable.

Application of the Amending Directive to Nord Stream 2

39. Nord Stream 2 is an "interconnector" within the meaning of the new definition of that term introduced by the Amending Directive (described in paragraph 35 above). Consequently, the rules of the Gas Directive and the Gas Regulation will become applicable to it.

40. By including the wording "*completed before 23 May 2019*" in Article 49a, it appears that the EU intends to exclude the possibility of NSP2AG applying for a derogation under Article 49a, as will be described further at paragraphs 44-48 below.

41. Nord Stream 2 is not eligible for an exemption under Article 36 of the Gas Directive. Article 36 provides a possible exemption from the rules concerning unbundling, third party access and tariff regulation for new "*major gas infrastructure*". Recital (35) of the Gas Directive explains that such new major infrastructure "*should be strongly promoted*" but has an "*exceptional risk profile*" and so exemptions should be allowed in order to enable the building of such infrastructure.¹⁴

42. NSP2AG cannot make an application under Article 36 for an exemption because, among other things, an applicant for an Article 36 exemption must demonstrate that its planned infrastructure would not be built without the exemption, i.e. that "*the level of risk attached to the investment must be such that the investment would not take place unless an exemption was granted*".¹⁵ As explained in the Staff Working Document accompanying the

¹² Exhibit CL-3, the Amending Directive, Article 1(9).

¹³ Exhibit CL-3, the Amending Directive, Recital (4).

¹⁴ Exhibit CL-4, the Gas Directive, Recital (35).

¹⁵ Exhibit CL-4, the Gas Directive, Article 36(1)(b).

Commission's proposal: "[a]s existing infrastructure cannot meet the "risk" criterion of Article 36, existing infrastructure could not request an exemption (but could be subject to derogation)...".¹⁶

43. Rationally, there should be no gap between the scope of Article 36, which concerns future projects for which investment risk has not yet been undertaken, and Article 49a, which concerns projects for which investment risk has been undertaken. Unless Nord Stream 2 is eligible for a derogation under Article 49a, Nord Stream 2 and NSP2AG's investment falls within this gap.
44. However, the EU has regrettably refused to provide NSP2AG with any clarification that Nord Stream 2 will be eligible for a derogation under Article 49a. While the EU has claimed that Member States are responsible for implementing the Amending Directive and determining any derogation applications, this should not have prevented the EU from clarifying how its own legislation should be interpreted in this regard.
45. On 12 April 2019, NSP2AG wrote to the European Commission as representative of the EU notifying it of possible breaches of the ECT and requesting amicable settlement pursuant to Article 26(1) of the ECT (the "**Trigger Letter**"). In its Trigger Letter, NSP2AG sought confirmation that NSP2AG would be treated as "*completed*" for the purposes of Article 49a and would, therefore, be eligible for a derogation.¹⁷
46. On 25 June 2019, NSP2AG met with the EU formally as part of the process under Article 26 of the ECT, and again sought confirmation regarding Nord Stream 2's eligibility for the derogation.¹⁸ This was followed by further correspondence from NSP2AG to the European Commission including a similar request on 8 July 2019.¹⁹ NSP2AG wrote again to the European Commission on 6 August 2019, noting its disappointment that the EU continues to refuse to explain its own understanding of how the legislation it recently drafted and passed into law is intended and expected to operate, and reserving the right to commence these arbitration proceedings without further notice to the EU.²⁰
47. In circumstances where all of the other existing third country offshore import pipelines appear eligible to apply for a derogation pursuant to Article 49a, it seems clear that the Amending Directive is part of a politically motivated campaign by the EU against NSP2AG. This

¹⁶ Exhibit C-4, Commission Staff Working Document Assessing the amendments to Directive 2009/73/EC setting out rules for gas pipelines connecting the European Union with third countries, 8 November 2017, SWD(2017) 368.

¹⁷ Exhibit C-5, letter from NSP2AG to Mr Jean-Claude Juncker as President of the European Commission, 12 April 2019.

¹⁸ Exhibit C-6, Note headed "*Summary of NSP2AG's legal concerns regarding the Gas Directive Amendment*", 14 June 2019, provided to the European Commission in advance of meeting on 25 June 2019; Exhibit C-7, "*Article 26 ECT Meeting – Nord Stream 2 AG's concerns regarding the Amending Directive*", NSP2AG presentation dated 25 June 2019.

¹⁹ Exhibit C-8, letter from NSP2AG to the European Commission, 8 July 2019.

²⁰ Exhibit C-10, letter from NSP2AG to the European Commission, 6 August 2019, in response to the letter from the European Commission to NSP2AG, 26 July 2019 (Exhibit C-9).

campaign, the adoption of the "*completed before 23 May 2019*" language in Article 49a and the EU's refusal to express a view on whether Nord Stream 2 is within the scope of Article 49a leads NSP2AG to conclude that the EU's unstated view is that Nord Stream 2 will be considered not to be completed and therefore not within the scope of Article 49a.

48. Accordingly, while NSP2AG reserves the right to apply to Germany for a derogation in the hope of mitigating its loss arising from the Amending Directive, it brings this claim on the assumption that it will not be considered as falling within the scope of Article 49a. NSP2AG reserves its right to amend this Notice of Arbitration and any further submissions in this arbitration in the light of any relevant subsequent developments in this context.

4. THE EU'S BREACHES OF THE ECT

49. The Amending Directive and the EU's actions in connection with the Amending Directive breach the EU's obligations under the ECT, including under Articles 10(1), 10(7) and 13:

- i. The Amending Directive constitutes an unreasonable and discriminatory measure which impairs NSP2AG's management, maintenance, use, enjoyment and disposal of its investment, in breach of Article 10(1) of the ECT;
- ii. The Amending Directive constitutes a breach of the EU's obligation under Article 10(1) to create stable, equitable, favourable and transparent conditions for NSP2AG's investment;
- iii. The Amending Directive constitutes a breach of the EU's obligation under Article 10(1) to accord NSP2AG's investment fair and equitable treatment, including but not limited to the EU's discriminatory and arbitrary treatment of NSP2AG's investment, lack of good faith, breach of NSP2AG's legitimate expectations, failure to afford NSP2AG due process, and failure to act proportionately;
- iv. The Amending Directive constitutes a breach of the EU's obligation to provide NSP2AG's investment constant protection and security, in breach of Article 10(1) of the ECT;
- v. The Amending Directive constitutes a breach of the EU's obligation pursuant to Article 10(7) of the ECT to provide NSP2AG with treatment no less favourable than that which it accords to Investments of its own Investors or of the Investors of any other Contracting Party or any third states; and
- vi. The cumulative consequences of the application of the Amending Directive to NSP2AG and Nord Stream 2 will be such as to have an effect equivalent to an expropriation and constitute a breach of Article 13 of the ECT.

50. The Claimant's losses arising from the EU's treatment of its investment in Nord Stream 2 have the potential to be catastrophic, and may amount to more than EUR 8.0 billion.
51. NSP2AG reserves the right, in due course, to claim damages in respect of the losses that have been and are being caused by the EU's breaches of the ECT. Such losses – which NSP2AG seeks, so far as possible, to avoid by its claim for injunctive relief – will be quantified and supported by expert evidence in this arbitration in due course.

5. RELIEF SOUGHT

52. NSP2AG will request relief of the following nature. NSP2AG reserves the right to submit detailed requests for relief at a later stage, and the right to amend or supplement its request as necessary:

- i. Declarations that the EU has breached Articles 10(1), 10(7), and 13 of the ECT;
- ii. An order for injunctive relief against further breaches by the EU of the ECT;
- iii. In addition, or in the alternative, to injunctive relief, an order that the EU pay to the Claimant compensation in an amount to be assessed, being the amount of the Claimant's losses resulting from the EU's breaches of the ECT;
- iv. An order for costs; and
- v. Such other and further relief as the Tribunal considers appropriate, in the circumstances.

53. The Claimant reserves the right to supplement or amend its claims and relief sought, and to present further argument and evidence, up to the date of the Final Award or any earlier date set by the Tribunal.

6. REFERENCE TO ARBITRATION

The Claimant has complied with the 'cooling-off' period in Article 26(2) of the ECT

54. On 12 April 2019, the Claimant served its Trigger Letter on the EU notifying it of the Dispute and requesting that the EU meet with the Claimant in an attempt to settle the Dispute amicably.²¹ The EU replied by a letter of 13 May 2019, agreeing to a meeting with the Claimant in connection with the Dispute.²² Following further correspondence,²³ the Claimant and the EU duly met in person on 25 June 2019 to attempt to resolve this Dispute, and the

²¹ Exhibit C-5, letter from NSP2AG to Mr Jean-Claude Juncker as President of the European Commission, 12 April 2019.

²² Exhibit C-11, letter from the European Commission to NSP2AG, 13 May 2019.

²³ Exhibit C-12, letter from NSP2AG to the European Commission, 27 May 2019.

Claimant wrote to the EU again on 8 July 2019²⁴ and 6 August 2019.²⁵ However, such attempts were not successful.

55. More than three months have elapsed since the Claimant served the Trigger Letter on the EU. The requirement in Article 26(2) of the ECT has therefore been satisfied.

The EU has consented to arbitration under the ECT

56. The EU has consented to arbitration under the ECT. Article 26 of the ECT provides that:

"(1) Disputes between a Contracting Party and an Investor of another Contracting Party relating to an Investment of the latter in the Area of the former, which concern an alleged breach of an obligation of the former under Part III shall, if possible, be settled amicably.

(2) If such disputes cannot be settled according to the provisions of paragraph (1) within a period of three months from the date on which either party to the dispute requested amicable settlement, the Investor party to the dispute may choose to submit it for resolution:

(a) to the courts or administrative tribunals of the Contracting Party party to the dispute;

(b) in accordance with any applicable, previously agreed dispute settlement procedure; or

(c) in accordance with the following paragraphs of this Article.

(3)(a) Subject only to subparagraphs (b) and (c), each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration or conciliation in accordance with the provisions of this Article.

(b) (i) The Contracting Parties listed in Annex ID do not give such unconditional consent where the Investor has previously submitted the dispute under subparagraph (2)(a) or (b).

(ii) For the sake of transparency, each Contracting Party that is listed in Annex ID shall provide a written statement of its policies, practices and conditions in this regard to the Secretariat no later than the date of the deposit of its instrument of ratification, acceptance or approval in accordance with Article 39 or the deposit of its instrument of accession in accordance with Article 41."

57. The EU is listed in Annex ID pursuant to Article 26(3)(b)(i).
58. The Claimant has not previously submitted the Dispute under Article 26(2)(a) or (b) of the ECT.

The Claimant consents in writing for the dispute to be submitted to UNCITRAL arbitration

59. Article 26 of the ECT further provides:

"(4) In the event that an Investor chooses to submit the dispute for resolution under subparagraph (2)(c), the Investor shall further provide its consent in writing for the dispute to be submitted to:

[...]

²⁴ Exhibit C-8, letter from NSP2AG to the European Commission, 8 July 2019.

²⁵ Exhibit C-10, letter from NSP2AG to the European Commission, 6 August 2019.

(b) a sole arbitrator or ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (hereinafter referred to as "UNCITRAL"); [...]"

60. The Claimant hereby consents in writing to submit the Dispute to arbitration by an ad hoc arbitration tribunal established under the UNCITRAL Rules.

7. CONSTITUTION OF THE TRIBUNAL AND PROCEDURAL MATTERS

Appointment of arbitrators

61. The Claimant has consented to the submission of the Dispute to an ad hoc tribunal established under the UNCITRAL Rules, pursuant to Article 26(4)(b).
62. In accordance with Article 3(3)(g) of the UNCITRAL Rules, the Claimant notes that it is appropriate that the Dispute should be resolved by a three-member tribunal, given the substantial amounts in dispute and the complexity of the issues in the arbitration.
63. Pursuant to Article 7(1) of the UNCITRAL Rules, one arbitrator shall be appointed by the Claimant and one by the Respondent, with the Presiding Arbitrator to be appointed by the agreement of the party-appointed arbitrators, in default of which Article 7(3) of the UNCITRAL Rules will apply.
64. Pursuant to Article 3(4)(b) of the UNCITRAL Rules, the Claimant hereby notifies the Respondent that it has appointed Peter Rees QC as its party-appointed arbitrator. The contact details for Peter Rees QC are as follows:

Peter Rees QC
39 Essex Chambers
81 Chancery Lane
London WC2A 1DD
United Kingdom
Telephone: +44 (0)20 7832 1111
Email: peter.rees@39essex.com

Seat of the arbitration

65. Consistent with the principle of neutrality underlying arbitration, the Claimant's position is that the seat of arbitration should not be in an EU Member State.
66. The Claimant recognises that, absent any agreement as to the seat of arbitration, it is for the Tribunal to determine the seat of the arbitration in accordance with Article 16(1) of the UNCITRAL Rules. The Claimant reserves its right to make further submissions to the Tribunal as to an appropriate neutral and well-recognised arbitral seat in due course, should that prove necessary.

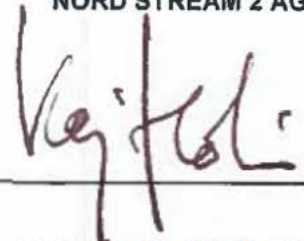
Language of the arbitration

67. Pursuant to Article 17(1) of the UNCITRAL Rules, the Claimant hereby proposes that the language of the arbitration shall be English.

8. **INTERIM RELIEF**

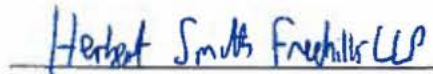
68. NSP2AG intends to file a request for interim relief as soon as the Tribunal is constituted to request that the Tribunal orders the EU immediately to suspend the application of the Amending Directive in relation to NSP2AG until after the Tribunal has issued its Final Award.

Submitted for and on behalf of
NORD STREAM 2 AG



Professor Dr. Kaj Hobér

and



Herbert Smith Freehills LLP

26 September 2019